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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1412

WALTER S. COOPER, *Plaintiff and Appellant,* vs. LESLIE SALT COMPANY, et al., *Defendants and Respondents.*	California Supreme Court S.F. No. 22,616
WALTER S. COOPER, *Plaintiff and Appellant,* vs. T. JACK FOSTER, et al., *Defendants and Respondents.*	California Supreme Court S.F. No. 22,617
WALTER S. COOPER, *Plaintiff and Appellant,* vs. ESTERO MUNICIPAL IMPROVEMENT DISTRICT, et al., *Defendants and Appellants,* T. JACK FOSTER, et al., *Interveners and Respondents.*	California Supreme Court S.F. No. 22,619

BRIEF OF ESTERO MUNICIPAL IMPROVEMENT DISTRICT, G. C. SHANNON, W. A. INNES, C. W. OLMO, ST. PAUL INSURANCE COMPANIES, and ERNEST A. WILSON IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Come now the respondents above named and submit to this Honorable Court their brief in opposition to petitioner's petition for writ of certiorari as follows:

I

STATEMENT OF FACTS

In 1960 the California State Legislature passed an Act declaring the creation of the Estero Municipal Improvement District (Stats. 1960, ch. 82). Said Act was entitled "An Act to Create the Estero Municipal Improvement District and to prescribe the boundaries, organization, powers, operation, management, financing, change of boundaries, and dissolution." Said Act is referred to herein as the "Estero Act."

On February 7, 1961 (one RT 159)[1] the District, pursuant to section 121 of the Estero Act, filed an *in rem* action (Superior Ct. No. 93050) in the Superior Court of the State of California entitled "In the Matter of the Validity of the Formation of the Estero Municipal Improvement District by Chapter 82 of Statutes, First Extra Session, 1960, of the State of California; and the proceedings for the authorization of $22,000,000 of Bonds pursuant to said Act". A validating judgment was entered on December 20, 1961. The findings, orders and determinations of said judgment were set forth in 31 numbered paragraphs. A copy of said findings, orders, and determinations are set forth in the *Appendix* to this brief.

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[1]At this point we will clarify references to the record. There were two cases filed in the Superior Court. The *first* case was *Cooper v. Foster, et al.* The case resulted in two appeals (S.F. 22617 and S.F. 22616) because the defendants were dismissed in two groups. The *second* case was *Cooper v. Estero Municipal Improvement District, et al.* (S.F. 22619).

The *Cooper v. Foster, et al.* appeal record citations will be preceded by the word "one." The *Cooper v. Estero Municipal Improvement District, et al.*, record citations will be preceded by "two."

Nearly five years later, and on December 3, 1966 the petitioner filed the *Cooper v. Foster, et al.* action (one CT 3). Said action was brought by petitioner as a resident and taxpayer of the District. It initially named various "Foster" defendants (T. Jack Foster; T. Jack Foster & Sons; T. Jack Foster, Jr.; J. R. Foster; Richard H. Foster; Foster D. Corporation; Foster T. Corporation; Foster J. Corporation; Foster B. Corporation) and it named the Estero District and its then Board of Directors (G. C. Shannon; W. A. Innes; C. W. Olmo) as defendants. Also as defendants were "Doe One, through Doe One Hundred, inclusive." Several "true names" of Does were later asserted by amendments.

Said complaint was twice amended (one CT 12, 23, 66). A copy of the allegations of said complaint showing all amendments thereto is set forth in the *Appendix* to this brief.

On December 20, 1966, which was 17 days after the filing of the first suit, the petitioner filed the *Cooper v. Estero Municipal Improvement District, et al.,* case (two CT 2). Said second suit, referred to herein as *Cooper v. Estero,* was brought by petitioner as a resident and taxpayer of the District (two CT 2). It named the District and its then Board of Directors (Shannon, Innes, and Olmo) as respondents. Various "Foster" defendants subsequently intervened (two CT 25). The original complaint, a petition for writ of mandate, was twice amended. A copy of the allegations of petitioner's Second Amended Petition (two CT 128) is contained in the *Appendix* to this brief.

On October 27, 1966, the trial court sustained demurrers to petitioner's Second Amended Petition in *"Cooper v. Estero,"* the second case (two CT 345B), and on October 30, 1966, dismissed the case (two CT 346-347).

On January 26, 1967, the trial court sustained demurrers to the second amended complaint in *Cooper v. Foster, et al.,* the first case, and dismissed the "Foster" defendants, the District, and its then Board (one CT 67, 72-73). Several remaining "Doe" defendants, whose "true" names had been added, were later dismissed.

With the above as a basic background, we will turn to a consideration of petitioner's arguments. Before doing so, it should be noted that petitioner refers to matters allegedly contained in a "Cross-Complaint of Defendant in Intervention Walter S. Cooper" (at pages 11-13 of petitioner's Petition herein). Such cross-complaint was never properly before the California courts (see opinion in *Cooper v. Estero,* 70 AC at 691) and petitioner conceded such before the California Supreme Court (70 AC at 691). Petitioner doesn't assert error as regards said California Supreme Court's ruling upon said cross-complaint, and, thus, we will exclude any reference to said cross-complaint in discussing petitioner's contentions before this Court.

Finally, any further facts needed to fill out the case will be set forth as needed in the arguments to which they pertain.

II

ORDER OF ARGUMENTS PRESENTED

Petitioner presents three arguments entitled "Constitutionality of Estero Act" (at 14-16 of his petition); "Voting Rights of Petitioner" (at 16-18 of said petition); and "Right of Petitioner that the Land Developer Account to the Estero District" (at 18-19 of said petition).

To avoid repetitious explanations, said arguments will be considered in the following order: (1) the "accounting" argument, (2) the "constitutionality" argument, and, finally, (3) the "voting" argument.

III

THE "ACCOUNTING" ARGUMENT

A. Pertinent facts

The accounting argument relates to the second suit, that is, the *Cooper v. Estero* case. As noted above, the Second Amended Petition in that case (the pleading upon which a judgment of dismissal was rendered) is contained in the *Appendix* to this brief.

A review of said Second Amended Petition shows that it contained six counts. The "accounting" claim relates to count one of said pleading.

The California Supreme Court addresses itself to said count one of *Cooper v. Estero* (70 AC 687) at pages 692-693 of their opinion thereon. The court states, at 692:

> Plaintiff apparently views the first cause of action as one for an accounting. *Any such action must be predicated upon the theory that plaintiff is suing on behalf of the district.* Even if such an action by a taxpayer be considered tenable, *the petition does not allege that plaintiff is suing on behalf of the district, nor is it alleged that he made a demand upon the district to request an accounting from the Fosters* (see 1 Cal.Jur.2d 426) *and that such a demand was refused.* (Emphasis added.)

Thus, the Court's decision was predicated upon the failure to allege facts essential to raising the issue. That is, the claim was defectively pleaded.

B. No Federal question

Rules of pleading and practice in state courts are considered as binding on federal courts unless the decision was rendered in a spirit of evasion for the purpose of defeating the claim of a federal right (*Nevada-California-Oregon Railway v. Burres,* 37 SCt 576, at 577, 244 US 103). A state is free to regulate the procedure of its courts in accordance with its own concepts of policy and fairness unless in so doing it offends some principle of justice so rooted in the tradition and conscience of our people as to be ranked as fundamental (*Synden v. Commonwealth of Massachusetts,* 54 SCt 333, at 335, 291 US 97; *Twining v. New Jersey,* 29 SCt 14, at 21, 211 US 78; *Rogers v. Peck,* 26 SCt 87, at 89, 199 US 425).

The rule that a prior demand must be made upon the entity is a well settled rule. It is the general rule

that a demand upon the proper public officer to bring suit is a condition precedent to the maintaining of a taxpayers' action (52 Am.Jur., *Taxpayers' Actions*, at 17). The primary right of suit is with the officers of the entity (*Hansen v. Carr*, 73 CA 511, at 515, 238 P 1048; *Keith v. Hammel*, 29 CA 131, at 135, 154 P 871). A failure to allege that such a demand has been made has long been recognized as a grounds for general demurrer (*Hansen v. Carr, supra*, at 514-515).

By failing to allege a prior demand on the entity, or at least some excuse for not doing so, petitioner failed to comply with established pleading and practice rules of this state. Thus, his claim never arose to the level of presenting a federal question. The same could be said of petitioner's failure to allege that he was suing on the entity's behalf rather than directly on his own behalf (see, *Wilson v. Loews*, 78 SCt 526, 355 US 597).

Finally, a review of said count one will show that petitioner never asserted any violation of his rights under our federal constitution. That is, he never pleaded that his right to an accounting was based on the U. S. Constitution or that the failure to grant an accounting would violate any right given by the U. S. Constitution. Therefore, additionally, no federal question was timely raised (*Atlantic Coast Line R. Co. v. Mims*, 37 SCt 188, at 189, 242 US 532).

It might be noted, finally, that petitioner finds no fault with the pleading and practice rules asserted by the California Supreme Court in ruling on his accounting claim.

The "accounting" argument presents no federal question.

IV

THE "CONSTITUTIONALITY" ARGUMENT

Petitioner's "constitutionality of the Estero Act" argument (Petition, at pp. 14-16) is concerned with the first case, that is *Cooper v. Foster, et al.*, and the Opinion of the California Supreme Court thereon (70 AC 669, at 672-687).

A careful reading of petitioner's argument discloses that he apparently misunderstands the holding of the court.

Petitioner seems to find in the opinion a holding that "the effect of the ruling of the court is apparently to make the Estero District . . . . immune from any assertion of constitutional rights by petitioner and other taxpayers" (petition, at p. 15). Such is, of course, not the holding of the court.

Simply put, the Opinion merely holds that a *private person* cannot attack the *existence* of the District once the proceedings for the formation of the District have been completed; that the only person who can attack the *existence* of a completed District is the state attorney general by the route of *quo-warranto*. The material on the limitations of a private person's rights to attack the *existence* of such a public entity is set forth at 70 AC 669, at 675. The application of the limitation of attacks on the district's *existence* on

claimed constitutional defects in the forming statute is set forth at 70 AC 669, at 676. On this latter point the court states, at 676:

> The court considered that because there was no valid statute under which the purported corporation could have been created, no de facto corporation could exist. *But later cases have held that without regard to the claimed unconstitutionality of any statute, it is only where proceedings to create a district have not been fully completed that a private citizen can question their validity.* (*Alden v. Superior Court* (1963) 212 Cal.App.2d 764, 769-770 [28 Cal.Rptr. 387]; *City of Colton v. City of Rialto* (1964) 230 Cal.App.2d 174 [40 Cal. Rptr. 766]; *Hazelton v. City of San Diego* (1960) 183 Cal.App.2d 131, [135] [6 Cal.Rptr. 723]; [see also *Yorty v. Anderson* (1963) 60 Cal.2d 312, 316 [33 Cal.Rptr. 97, 384 P.2d 417]].) (Emphasis added.)

Since the rule is that a *private* person may *not* attack the *existence* of a public corporation once it is completely formed, it makes no difference what the *reasons* are which are asserted as a basis of the attack. If such *reasons* might form a basis for attacking the existence of a public corporation, still, they can only be asserted by the attorney general.

The Opinion *does not* say that a person cannot now or in the future attack the constitutionality of the Estero Act as it applies to that person, all it says is a private person cannot attack the *existence* of the district by asserting a constitutional defect in the forming statute.

This Court has, itself, recognized the limits upon a private person's right to proceed where only the government by quo warranto can proceed *(Wallace v. Anderson,* 5 Wheat 290, at 290; *Territory v. Lockwood,* 3 Wall 236, at 236-237; *Newman v. U. S. ex rel. Frizzell,* 35 SCt 881, 238 US 537).

A few final comments will close this argument. *First,* the petition makes some comment on the court's holding in regard to the above referred to validation judgment (petition, at p. 14) of 1961. The holding of the court is set forth at 70 AC 669, at 676. The court merely holds the validation judgment as another grounds of preventing an attack upon the District's existence, for it is said, at 676:

> In the present case, the prior validation judgment declared that the district was validly created. The district's existence is thus not subject to the attack here attempted.

Such a ruling is proper *(Ivanhoe Irrigation Dist. v. All Persons,* 47 C2d 597, at 606, 306 P2d 824; *Sutphin v. Speik,* 15 C2d 195, 99 P2d 652). The petition (at p. 15 of the Petition) confuses a *"Validating Act"* with a "Validation Action." Since we are *not* here concerned with a Validating *Act,* but rather an *in rem* Validation Judgment, his point about Validating Acts is not in point. *Second,* the court passed on petitioner's attempt to attack the District's existence by the route of declaratory relief (at 70 AC 669, at 676-677). The court properly stated that the declaratory relief statute in California wasn't designed to undermine the policy of the quo warranto statute.

In conclusion, petitioner has misread the court's rulings on quo warranto and the validating judgment. The court did *not* hold that they precluded all future attacks on the constitutionality of the statute; all the court held was that they precluded an attack by a *private* person on the District's *existence*. The court didn't hold that the petitioner or other persons couldn't raise the constitutionality of any part of the statute as it applies to them. *In fact the court took a careful look at the roughly pleaded property voting claim of petitioner.*

V

THE VOTING RIGHTS ARGUMENT

A. Introductory facts

At the time of the filing of the herein actions, the Estero Act provided for a Board of Directors having three members (Section 26). One of the three directors was an appointee of the County Board of Supervisors (Section 28) and the remaining two were to be elected by a vote of property owners of the District with one vote for each one dollar ($1) in assessed valuation of property owned (Section 64).

After the actions were dismissed, the Legislature of the State increased the number of Directors to five (5). Two of the Directors were to be elected by *registered voters* resident within the District, two were to be elected by a vote of property owners, and one an appointee of the County Board of Supervisors. After 1969 the "appointee" shall be elected by *registered*

voters resident within the District. After 1971 all five directors shall be elected by *registered voters* resident within the District.

Such changes were made by Statutes 1967, Chapter 1511. A copy of said statute is included within the *Appendix* to this brief.

Petitioner finds constitutional fault with the property qualifications for voting and, also, with the procedure set up by the Legislature as aforesaid changing the vote over to *registered voters*. Petitioner thinks the procedure is too slow.

B. Respondents' contentions

Respondents contend (1) that petitioner has no standing to raise the question sought to be raised, (2) that property qualifications for voting in special purpose districts is not violative of the constitutional rights of non-property owners, and (3) that, in any event, in the subject District the legislature has made provision for the transfer of voting qualifications from property qualifications to registered voter qualifications.

C. Petitioner has no standing

In both cases *(Cooper v. Foster* and *Cooper v. Estero)* the petitioner asserted that he was representing a class of "taxpayers" and "residents" of the District and that *he* was a member of said class (see the pleadings set forth in the *Appendix* to this brief).

Petitioner did *not* assert that he was a *voter, a registered voter, an elector,* or that he would have a right

to vote if the property qualifications for voting were removed. *His status* and the *status of the class* he assertedly represents is that of *residents* and *taxpayers.* Petitioner thus failed to assert a status which will give him standing to assert the voting question before this court.

It should be noted that the elimination of the property qualifications for voting wouldn't throw the vote open to "taxpayers" or "residents", but would put the voting in the hands of "electors" under Article II section 1 of our State Constitution. Differently stated, "taxpayers" and "residents" as such are not voting classes in this state under our constitution. "Residents" and "taxpayers" are groups containing persons of all ages, including minors and other disqualified persons. *Being a resident or a taxpayer doesn't establish one as being an eligible voter.*

It should be noted that *neither* of the Opinions in *Cooper v. Foster* or *Cooper v. Estero* hold that petitioner or the class petitioner represents would be eligible to vote in any election. They merely state that petitioner is a resident and a taxpayer.

It is fundamental that a person can't challenge the constitutionality of a statute unless he is within the class whose constitutional rights are allegedly infringed (*Barrows v. Jackson*, 73 SCt 1031, at 1035, 346 US 249; *New York ex rel. Hatch v. Reardon*, 27 SCt 188, at 190, 204 US 152; *Jeffrey Mfg. Co. v. Blagg*, 35 SCt 167, at 169, 235 US 571). A person can't claim standing solely for the purpose of vindi-

cating the rights of some third parties *(Barrows v. Jackson, supra,* 73 SCt 1031, at 1034, 346 US 249). The petitioner must allege facts showing disadvantage *to him* as an *individual* in order to have standing to sue *(Baker v. Carr,* 82 SCt 691, at 704, 369 US 202). He must show that the alleged unconstitutional feature injures *him (Heald v. Dist. of Columbia,* 42 SCt 434, at 435, 259 US 111; *First National Bank of Shreveport v. Louisiana Tax Comm.,* 53 SCt 511, at 513, 289 US 60).

A person who desires to question the constitutionality of a Statute as regards voting is in no position to impugn the constitutionality of such statute where he fails to allege that he is a qualified voter *(Wiley v. Sinkler,* 21 SCt 17, at 21, 179 US 58).

In *Baker v. Carr, supra,* 82 SCt 691, at 703, 369 US 202, the petitioners alleged that they were qualified to vote and that they sued on behalf of qualified voters. In *Smiley v. Holm,* 52 SCt 397, at 397, 285 US 355, petitioners were "electors." In *Koenig v. Flynn,* 52 SCt 403, at 403, 285 US 375, they were "voters." In *Wood v. Broom,* 53 SCt 1, at 1, 287 US 1, they were "qualified electors." In *Grey v. Saunders,* 83 SCt 801, at 801, 372 US 375, the action was by a qualified voter. In *Cipriano v. City of Houma,* No. 705—October Term 1968, decided June 16, 1969 (Respondent has no citation other than the above) the appellant was a "duly qualified voter."

Here petitioner has not alleged that he or his group are qualified voters and would be eligible to vote if the property qualifications for voting were removed. He

thus has no standing to assert the voting question attempted to be asserted by him.

D. Voting argument—merits

Assuming for the purpose of argument that petitioner has standing to assert the matter, still, his voting rights claim is non-meritorious and presents no substantial federal question. Such can be shown by reviewing the pertinent facts, analyzing petitioner's contentions, and considering the basic nature of Special Districts. Such we will now do and in that order.

(1) Pertinent facts

A review of the Estero Act, the pleadings in the cases, the Validation Judgment, and the Opinions of the California Supreme Court discloses substantially, at least for orientation purposes, the essential nature of what has occurred at Estero.

In summary, the formation of the Estero District was for the purpose of reclaiming and improving lands located in the San Francisco Bay and lying at bay level. Such lands were, prior to the formation of the District, protected by a levee from inundation by the ebb and flow of the tide and in such condition were substantially useless for anything else but limited farming.

As stated in the Opinion in *Cooper v. Foster* (70 AC 669, at 680), at the time the District was formed the area was *uninhabited*. The District's project encompassed the reclamation of the District's lands by filling so as to bring such lands to a state of readiness wherein it would be susceptible to the receiving of

streets, sewer, drainage, lighting facilities, and water facilities and being subdivided into homesites. Further, being located on the Bay where numerous small boats abound, provision was made for the creation of a small craft harbor and attendant facilities. The financing of such improvements was to be accomplished by the sale of bonds; and the payment of such bonds was to be made by charges levied on the property within the District.

At the time the present actions were filed, substantial reclamation had been done (the complaint in *Cooper v. Foster* alleged $30,000,000, but actually, the total amount spent on all improvements at that time was in the neighborhood of $54,000,000, such monies being received from the sale of general obligation and special assessment bonds) and the reclaimed area had been subdivided into homesites and homes built thereon and sold (at such time the project was only partially completed—work was still underway and substantial completion was scheduled for the early 1970's).

As stated above, at the time the District was formed and for some time thereafter there were no inhabitants in the District area. At the time of the formation of the District, the Estero Act provided that the Board of Directors of the District would be made up of three (3) persons. Two (2) of such persons were to be landowners or their representatives, and one (1) of such persons was to be an appointee of the County Board of Supervisors. Also, said Act provided that the two property owner-Directors were to be elected

by a vote of the landowners with voting being in proportion to the assessed value of the property owned.

In 1967, after the dismissal of the subject actions, the State Legislature amended the Estero Act to provide for a transition of voting rights from the landowners to *registered voters resident within the District* (Stats 1967, chapter 1511). A copy of said amending statute is contained in the *Appendix* to this brief. Said amendment increased the number of Directors to five (5). Two (2) of said Directors were to be *registered voters resident within the District* and were to be elected by *registered voters resident within the District*. One (1) was still to be appointed by the Board of Supervisors of the County; but after December, 1969, said member was to be a *resident registered voter* and be elected by *resident registered voters*. Two (2) were still to be property owners elected by property owners; but after December, 1971, said Directorships were to be filled by *resident registered voters* and elected by *resident registered voters*.

Because of the process of reclamation, subdivision, and sale, there are now a large number of *homeowning property owners* and their families in the District. Each homeowner's property, of course, is burdened with its proportional share of cost of the project. Such homeowners' faith in and reliance upon the ultimate completion of the project and their willingness to buy homes based on such faith is, of course, that which has made the project so far successful and possible. Such homeowners are vitally interested in the timely and successful completion of the project as

planned. Any faltering or delay in completing the project as scheduled could cause them substantial losses resulting from increased bond interest charges during periods of delay. A successful completion of the project will operate, of course, to spread the costs and taxes over a wider base and avoid possible defaulting of the outstanding bonds (see the Complaint in Intervention of the Foster City Community Association, at two CT 182).

(2) Petitioner's contentions

A survey of petitioner's voting argument (Petition for Writ, at 16-17) shows that he objects to the *timetable* set up by the Legislature for transferring the voting power from property owners to resident registered voters.

It should be noted that *the 1967 amendment to the Estero Act rendered* as *moot* any *argument over being denied a vote under the original Act*. Said voting provisions of the original Act became inoperative shortly after the dismissal of the subject lawsuits.

Petitioner's contention, apparently, is that there should be no transition period; that the property owners' vote should be taken away immediately and all voting immediately turned over to resident registered voters. That is, he objects to the "delay until late 1971 in the enforcement of the 'one man one vote' principle" (Petition for Writ, at 17).

(3) Voting argument—discussion

One thing is certainly clear: *At the time the District was formed* there were *no inhabitants* of the

District. Therefore, regardless of what might be the rule had there been inhabitants, it is clear that *at the time of the formation of the District there was no equal-protection objection to a property owner vote qualification.*

The project envisioned (and envisions) a gradual transfer, by the sale of homes, of the area from a one owner situation to a multiple homeowner situation as the project goes from its beginning to its completion; and, thusly, the "resident" situation would gradually change from a no-resident to a multiple-resident condition as the project goes from initiation to completion.

Now it could hardly be argued that the Legislature had to turn the whole operation of the District over to the first registered voter who took up residence in the District.[2] In a gradually changing situation, as was here presented, it is reasonable to provide for a gradual transfer (assuming that such a transfer is proper in the first place). Since the number of residents will increase proportionally with the rate of project completion, it is reasonable to relate the two and tailor the transfer to project completion. Such is substantially what was done it seems. The situation presented to the Legislature was reasonably unique, and the Legislature could reasonably, it seems, devise

[2]No one has raised the issue whether the Legislature can constitutionally exclude property owners of a special District from voting in Special District affairs. The discussion of the nature of Special Districts set forth hereafter shows that the property owners are *the* prime substantially interested group in a Special District. It's assumed, for the purpose of this case, but not conceded, that such is proper.

a procedure designed to handle the problems presented.

Keeping in mind the injuries which the homeowners could suffer from project delays, and keeping in mind the large amount of monies involved, and keeping in mind that the people who were on the Board were knowledgeable from years of experience in all phases of the project, and keeping in mind that an all new inexperienced Board of uninformed persons might be elected if a total transfer was ordered, and keeping in mind the need for an orderly and timely completion of the project, and keeping in mind that the improvement aspect of the project is grounded upon the ability to sell and continue to sell bonds and that a smooth running project and a capable Board are essential to maintain the respect of bond buyers in this type of project, keeping such things in mind, the State Legislature could reasonably find it *necessary* to provide for a gradual transition in authority rather than an abrupt change. No violence is, or was, done to the principles laid down in *Kramer v. Union Free School District No. 15* or in *Cipriano v. City of Houma*[3] by the procedure adopted by the legislature in meeting the problem before it; and no substantial federal question is presented.

Before moving on, the question here sought to be raised is a *voting qualifications* problem rather than a one man—one vote problem. The one man—one vote

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[3]These two cases were decided on June 16, 1969. Both were October Term 1968 cases. *Kramer* is No. 258 and *Cipriano* is No. 705 of that Term.

principle (*Baker v. Carr*, 82 SCt 691, 369 US 202; and *Avery v. Midland County*, 88 SCt 1114, 390 US 474), dealing as it does with dilution of the vote through mal-apportionment of elected bodies, concerns a different aspect of equal protection than that involved in voting qualification cases. Thus, no discussion thereof is provided herein.

(4) Voting in special districts

The above materials actually handle the rather narrow issues presented by the present Petition for Writ. But, Special Districts are so numerous and have brought about such a great amount of worthwhile public improvements that when a question is raised as regards some fundamental aspect of their operation, such as voting, more is required than just a narrow approach to the problem. One should have some idea of the arena in which he is working.

A consideration of the nature of Special Districts will show that property owner voting is proper. That is, Special Districts present the situation wherein a true and correct voting distinction may be made upon the relative interests involved. Or differently put, the *property owner* status presents a *substantial* interest: a *resident status*, constitutionally, presents merely a *coincidental, general, and insubstantial* interest.

To begin with, Special Districts are of many types. There are, for examples, Public Utility Districts, Flood Control Districts, Water Storage Districts, Fire Protection Districts, Water Conservation Districts,

Soil Conservation Districts, Drainage Districts, Water Replenishment Districts, Mosquito Abatement Districts, Irrigation Districts, Reclamation Districts, Lighting Districts, Sanitation Districts, Swamp Land Districts, Police Protection Districts, Municipal Improvement Districts, Sewer Districts, and Highway Districts. There are many others.

Such Districts may be created directly by a special act of the Legislature (*Chesebro v. Los Angeles County Flood Control District,* 59 SCt 622, 306 US 459; *Branson v. Bush,* 40 SCt 113, 251 US 182), or, they may be, and such is the usual case, created under general laws by local boards such as County Boards of Supervisors (*Embree v. Kansas City & L.B.R. Dist.,* 36 SCt 317, 240 US 242).

It may be noted at this point that a proper qualification for voting in the affairs of such Districts is the rule (see, for example, *Hagar v. Reclamation District No. 108,* 4 SCt 663, at 664, 111 US 701; *People v. Reclamation District No. 551* (Cal), 117 C 114, at 122, 48 P 1016; *People v. Sacramento Drainage District* (Cal), 155 C 373, at 389, 103 P 207; *Potter v. Santa Barbara* (Cal), 160 C 349, at 355, 116 P 1101; *Tarpey v. McClure* (Cal), 190 C 593, at 606, 213 P 983; *Barber v. Galloway* (Cal), 195 C 1, at 11, 231 P 34; *People v. Milan* (Colo), 5 P2d 249, at 251-254; *People v. Parker* (Colo), 192 P2d 417, at 418-422; *Board of Directors v. Peterson* (Or), 128 P 837, at 839-840; *In Re North Unit Irr. District* (Or), 187 P. 839, at 839; *Mann v. Gibbs* (N.Car.), 72 SE 82, at 83; *State v. Knott* (Mo), 75 SW2d 86, at 89; *State v.*

Patterson (Iowa), 70 NW2d 838, at 839; *In Re Walker River Irrig. District* (Nev), 195 P 327, at 330-332; *Davy v. McNeill,* (N.Mex), 240 P 482, at 488-489; *State v. Hansen* (Neb), 117 NW 412, at 414; *State v. Hansen* (Neb), 115 NW 294, at 298; *Pickard v. Cross* (Ky), 165 SW2d 986, at 987; *Mound City Land & Stock Co. v. Miller* (Mo), 70 SW 721, at 727; *Bethune v. Salt River Valley W.U.A.* (Ariz), 227 P 989, at 992).

The basic and fundamental characteristic of a Special District is that it is a "special benefit" District *(Embree v. Kansas City & L.B.R. District, supra,* 36 SCt 317, at 320, 240 US 242; *Chesebro v. Los Angeles County Flood Control District, supra,* 59 SCt 622, at 624, 625, 306 US 459). The drawing of the boundaries of such Districts and the inclusion of property therein are based on the concept that the property included will be *specially benefited* by the works, improvements, and services constructed or rendered by the District.

The creation of a Special District operates to carve out of a State or County an area of *property,* which area of property will be *specially* taxed or charged to pay for the improvements and services provided by the District. It is a matter of substantive due process that in order to justify the charging of a particular area for such improvements and services, rather than the County or State as a whole, that said area of properties must receive special benefits from such improvements distinct from the general benefits derived therefrom by the State or County as a whole. The

theory is recognized in many cases. As good a case as any, and because it has collected many of the pertinent authorities on the subject, is *Chesebro v. Los Angeles County Flood Control District, supra,* 59 SCt 622, at 624-625, 306 US 459. The following quotation from *Chesebro* and the cases cited therein sufficiently explain the matter:

> In the absence of flagrant abuse or purely arbitrary action, the State, consistently with the federal constitution, may establish local districts *to include real property that it finds will be specially benefited by drainage, flood control, or other improvements therein,* and, to acquire, construct, maintain and operate the same, may impose *special tax burdens upon the lands benefited. Hagar v. Reclamation District,* 111 U.S. 701, 704, 705, 4 S.Ct. 663, 665, 28 L.Ed. 569; *Spencer v. Merchant,* 125 U.S. 345, 355, 8 S.Ct. 921, 926, 31 L.Ed. 763; *French v. Barber Asphalt Paving Co.,* 181 U.S. 324, 342, 21 S.Ct. 625, 631, 45 L.Ed. 879. And see *Houck v. Little River Drainage District,* 239 U.S. 254, 262, 36 S.Ct. 58, 60, 60 L.Ed. 266. And where, within the scope of its power, the legislature *itself has found that the lands included in the district will be specially benefited by the improvements,* prior appropriate and adequate inquiry is presumed, and the finding is conclusive. *Parsons v. District of Columbia,* 170 U.S. 45, 52, 18 S.Ct. 521, 523, 42 L.Ed. 943; *Phillip Wagner, Inc. v. Leser,* 239 U.S. 207, 218, 36 S.Ct. 66, 69, 60 L.Ed. 230; *Withnell v. Ruecking Const. Co.,* 249 U.S. 63, 69, 69 S.Ct. 200, 201, 63 L.Ed. 479; *Hancock v. City of Muskogee,* 250 U.S. 454, 458, 39 S.Ct. 528, 530, 63 L.Ed. 1081; *Branson v. Bush,* 251 U.S. 182, 189, 190, 40 S.Ct. 113, 115, 64 L.Ed. 215;

Valley Farms Company v. Westchester County, 261 U.S. 155, 162, et seq., 43 S.Ct. 261, 262 et seq., 67 L.Ed. 585; *Milheim v. Moffat Tunnel Imp. Dist.,* 262 U.S. 710, 721, 43 S.Ct. 694, 698, 67 L. Ed. 1194. But *where the district* was *not directly created by the legislature* and there has been no determination by it that their property will be benefited by the local improvements *the owners are entitled, under the due process clause of the Fourteenth Amendment, to be heard by* some officer or tribunal empowered by the State to hear them and to consider and decide whether their lands *will be specially benefited. Fallbrook Irrigation District v. Bradley,* 164 U.S. 112, 167, 17 S. Ct. 56, 66, 41 L.Ed. 369; *Embree v. Kansas City & Liberty Boulevard Road Dist.,* 240 U.S. 242, 247, 36 S.Ct. 317, 319, 60 L.Ed. 624; *Browning v. Hooper,* 269 U.S. 396, 405, 406, 46 S.Ct. 141, 143, 70 L.Ed. 330.

The *Chesebro* case involved a Special District created by a Special Act of the Legislature (as is Estero).

As noted in *Chesebro,* where the State Legislature creates the district, the question of benefits to the included property is handled by way of a conclusive presumption; on the other hand, where the District is created pursuant to general laws by a County Board of Supervisors or the like, *each property owner,* without regard to his status, be he a corporation, private individual, resident, or non-resident, must be afforded notice and an opportunity to be heard on whether his property should be included—that is, whether his property will be benefited by the undertakings of the proposed District.

Thus, it is the fundamental nature of Special Districts that they are formed of *property* specially benefited, they are operated for the improvement and protection of such *property,* the charges levied by such district are against *property,* and the constitutional basis upon which said charges are levied is that they pay for the improvements and protections provided such *property.*

The formation and operation of a Special District looks *not* to *who* owns the property or whether there are *residents* upon it. The purpose of the District, and the constitutional basis upon which it is formed and operated, is the improvement, protection, and betterment of *property;* its purpose is not to serve the interests of residents as such but, instead, the interests of property owners. Residents, like the public generally, may receive some general benefits from the formation and operation of the District, but such benefits are purely *coincidental* and *non-special* and, therefore, not a constitutional consideration as regards the formation and operation of the District. Likewise, residents, like the public generally, may be affected by the formation and operation of a district; in fact, since the formation and operation of a District changes a given existing situation, it is almost inevitable that they will be affected; but such affects, again, are not a constitutional consideration in forming or operating a Special District. *The* constitutional consideration in the forming and operating of a Special District is *not* its general benefits for or coincidental affects on *persons,* but, instead, the benefits

and effects which the formation and operation of the district will have on the *property* included therein (see *Chesebro* and cases cited therein).

It should be carefully noted that it may happen that property within a given District is subdivided and developed, or property may be reclaimed, subdivided, and developed, thus giving rise to a *greater* number of property owners in the District, and perhaps, a greater number of residents. Such occurrences do not change the basic nature of the District or its purposes. Districts are formed, as stated, on the basis of including benefited properties; they are formed without regard to the number of residents therein at the time of formation. The formation of a District is neither constitutionally prohibited nor constitutionally authorized by the number of residents located in the District area. If the *property* sought to be included in a Special District is *not* specially benefited by the proposed District's operations, such District can*not* be formed *regardless* of the number of residents therein, be they many or a few. On the other hand, if such property *is* specially benefited, then it can be included and the District *can* be formed regardless, again, of the number of residents in the proposed area.

It is therefore patent that there is a *substantial* and distinct difference between a District property owner status, on the one hand, and a resident status on the other (some property owners, of course, are also residents). The property owner status is legally deemed to be the status which makes a person *the* interested

party to the formation and operation of the District (see *Chesebro, supra,* and cases cited therein). All other statuses are, constitutionally, only coincidentally involved, if involved at all. At this point a statement from *People v. Milan* (Colo), 6 P2d 249, a property voting case, is pertinent, at 251:

> It may be said that acts in this state concerning irrigation districts were enacted *to enable those interested in the development and increased productivity of their lands to organize public and quasi municipal corporations* for the purpose of securing water for irrigation, and to provide ways and means of applying that water to the soil. *Upon those interested and benefited the burden must necessarily fall; and it is reasonable to assume that these interested parties should, within certain limits, be the ones most vitally concerned with the economic problems and the efficient administration of the district.* The legislative department has recognized this principle of self-government, with reference to irrigation districts, and has accordingly prescribed certain qualifications for those who participate in the economic and elective matters of the district. (Emphasis added.)

California, of course, has also considered the matter, and reference to several California cases will provide the tenor of this state's approach to the problem.

First is *People v. Reclamation District No. 551, supra,* 117 C 114, at 123-124, 48 P 1016. In that case the court was called upon to decide whether property owner voting in the District before it violated a Cali-

fornia Constitution provision prohibiting a property qualification for voting. The court states:

> In my opinion, these latter districts are not municipal corporations, and no one is a voter in the sense of the constitutional provisions. Certainly, there can be no electors when there are no residents within the district. The district, as already said, was part of a scheme for conducting a public work, and not for self-government. In regard to street work and other local improvements, it has often been provided that the work shall only be done upon the application of the owners of a majority of frontage, or of a certain proportion of the owners of land; and, if the law had provided that the owners could elect a committee of their number to superintend the work, I do not see how it could change the principle. This could not constitute an exercise of the elective franchise, which is the matter to which the constitutional provisions have reference. *The general public has an interest in the reclamation of swamp and overflowed land. Nevertheless, it is one of those public enterprises which results in a benefit to private lands, and therefore the cost is made a charge upon such land. That those who are specially interested and who must pay for the improvement are heard upon the question as to whether it shall be done, and are permitted to appoint those who shall superintend it, is not unusual, nor would it constitute an exercise of the elective franchise.* (Emphasis added.)

The above California case was reaffirmed and followed in *Tarpey v. McClure*, 190 C 593, at 606, 213 P 983; and *Barber v. Galloway*, 195 C 1, at 11, 231 P 34. In

the latter case the court, at 12, upheld the right of a corporate property owner to vote:

> The matter of voting at elections of the character involved here is not the exercise of the right of suffrage in the ordinary sense (*People v. Reclamation District,* 117 Cal. 114 [48 Pac. 1016]; *Tarpey v. McClure,* 190 Cal. 593 [213 Pac. 983].) And, obviously, *a voice in the organization, the selection of the officers, and the issuance of bonds, of districts of the character under consideration here, which materially affect the property of the corporation, is a legitimate concern of corporate ownership.* (Emphasis added.)

Also, property owner voting in Special Districts is not without recognition by this U.S. Supreme Court. In *Hagar v. Reclamation No. 108,* 4 SCt 663, 111 US 701, a case out of California, the District was initiated by a property owners' petition (4 SCt, at 664). When the petition was granted, the property owners were required to establish by-laws "*and to elect three of their number to act as a board of trustees to manage the same*" (4 SCt, at 664).

See also the case of *Wurts v. Hoagland,* 5 SCt 1086, at 1090, 114 US 606, wherein the drainage commissioners were elected by landowners.

In summary, it is clearly discernible, considering the clearly established constitutional basis and justification for their creation and operation, that the property owner status is the status that gives a person a substantial interest in the District; and other statuses, such as a resident status, are coincidental

and insubstantial in the District's formation and operation. From the standpoint of substantial and insubstantial interests, the legislature, in line with the due process clause, can properly, and should, distinguish between property owners and non-property owners as regards who should choose the officers of the District.

Wherefore, it is respectfully submitted that the petitioner's petition for Writ of Certiorari be denied.[4]

Dated, San Mateo, California,
July 15, 1969.

WILSON, JONES, MORTON & LYNCH,
By ROBERT G. AUWBREY,
JOHN E. LYNCH,
FRANK PIOMBO,
Attorneys for Respondents Estero Municipal Improvement District, G. C. Shannon, W. A. Innes, C. W. Olmo, St. Paul Insurance Companies, and Ernest A. Wilson.

(Appendix Follows)

[4]Petitioner raises no issues and makes no comments in regard to the Respondent, St. Paul Insurance Companies, or in regard to Respondent, Ernest A. Wilson. Any extended comments concerning how such Respondents came to be in the case would be a waste of time and effort, since Petitioner raises no issues in regard to them. As to such two Respondents the herein petition for writ should be dismissed without question.

APPENDIX ITEM No. 1

ALLEGATIONS OF PETITIONERS COMPLAINT AS AMENDED BY FIRST AND SECOND AMENDMENTS IN COOPER v. FOSTER, ET AL., 70 AC 669

Note: Additions made by the first amendment are preceded by one (1) asterisk; additions made by second amendment are preceded by two (2) asterisks

* * * * * * *

"FIRST CAUSE OF ACTION

Plaintiffs complain of defendants and for their first cause of action allege:

I

Plaintiffs are members of a group of persons all of whom are residents of the area of land commonly known as Foster City, San Mateo County, California, are taxpayers therein, and have a common and identical interest in the subject matters of this complaint. The total number of said persons exceeds one hundred and it is impractical to bring all of said persons before the Court as individual plaintiffs, and therefore the named plaintiff, Walter S. Cooper, brings this action as a representative suit for and on behalf of himself and all other persons in said group.

II

The true names or capacities, whether individual, corporate associate, or otherwise, of defendants named herein as Doe One through Doe One Hundred, inclusive, are unknown to plaintiffs who therefore sue said defendants by such fictitious names, and plaintiffs

will amend this complaint to show the true names and capacities when the same have been ascertained.

*Plaintiff having discovered the true name of the defendant sued herein as Doe One to be Midwest Dredging Corporation, hereby amends the complaint by inserting such true name in the place and stead of such fictitious name wherever it appears in said complaint.

*Plaintiff having discovered the true name of the defendant sued herein as Doe Two to be Likins-Foster Honolulu Corporation, hereby amends the complaint by inserting such true name in the place and stead, of such fictitious name wherever it appears in said complaint.

**Plaintiff having discovered the true name of the defendant sued herein as Doe Three to be Lomita Homes, Inc., hereby amends the complaint by inserting such true name in the place and stead of such fictitious name wherever it appears in said complaint.

**Plaintiff having discovered the true name of defendant sued herein as Doe Seventy-Four to be St. Paul Insurance Companies, hereby amends the complaint by inserting such true name in the place and stead of such fictitious name wherever it appears in said complaint.

III

On or about May 11, 1960, at the instance and request of defendants T. Jack Foster and T. Jack Foster & Sons, there was enacted by the Assembly

and Senate of the State of California, and approved by the Governor of the State of California, a certain special law entitled "An act to create the Estero Municipal Improvement District and to prescribe its boundaries, organization, powers, operation, management, financing, change of boundaries, and dissolution." Said act purports to create a political subdivision of the State of California, but does not do so because it is in violation of the Constitution of the United States of America and the Constitution of the State of California.

IV

Said act is in conflict with the Constitution of the State of California in that, among other things, it violates Article II, Section 6 of the Constitution of the State of California, which states:

> 'Corporations for municipal purposes shall not be created by special laws.'

Said act purports to grant powers of a municipality and certain of the defendants have expended monies collected under the name of the purported Estero Municipal Improvement District for municipal purposes, namely, providing all of the services of a city to Foster City, and said action was enacted and is employed for municipal purposes.

SECOND CAUSE OF ACTION

Plaintiffs complain of defendants and for their second cause of action allege:

I

Plaintiffs re-allege and incorporate herein by reference each and every allegation of their first cause of action herein above set forth.

II

Numerous rights and obligations of the parties to this action and others depend upon the determination of the validity or invalidity of the terms and conditions of said act of the legislature and there is an actual controversy between the plaintiffs and the defendants in regard thereto.

III

*Defendants Doe Fifty-one through Doe Seventy-five are persons not residing in the Estero Municipal Improvement District whose rights and duties with relation to the subject matter of this action should be determined herein.

Wherefore, plaintiffs pray a declaration of this Court regarding whether said act and said purported political subdivision, Estero Municipal Improvement District, are valid or invalid, and constitutional or unconstitutional.

THIRD CAUSE OF ACTION

Plaintiffs complain of defendants and for their third cause of action allege:

I

Plaintiffs re-allege and incorporate herein by reference each and every allegation of their first cause of action herein above set forth.

II

About $30,000,000.00 of funds belonging to said purported District have been spent to improve and make saleable the real property of defendants T. Jack Foster, T. Jack Foster & Sons, T. Jack Foster, Jr., J. R. Foster, Richard H. Foster, Foster D. Corporation, Foster T. Corporation, Foster J. Corporation, and Foster B. Corporation under the claim that said expenditure is authorized as reclamation under the said act when said District is not lawfuly formed as a reclamation District and when said expenditure was not in fact for reclamation but rather for the improvement of dry private land of said defendants.

III

Said defendant T. Jack Foster & Sons have so dominated and controlled said Estero Municipal Improvement District that it has no existence independent of said T. Jack Foster & Sons and has been used to promote and finance the real estate development activities of said T. Jack Foster & Sons and only incidentally for public purposes. Said T. Jack Foster & Sons through said domination and control have

secured for themselves the power to control and administer the book-keeping of said District for a compensation from said District and have obtained other valuable contracts, privileges and benefits from said District through said control and domination to the loss of said District thereby causing said District a money loss the exact amount of which is not known at this time. By virtue of said control and domination said T. Jack Foster & Sons have obtained great private monetary advantage for themselves and the defendant Foster D, J, T, and B, Corporations which should be restored by them or by the defendants G. C. Shannon, W. A. Innes and C. W. Olmo to the said purported Estero Municipal Improvement District. Said monetary advantage was conferred upon said defendants without authority of law.

IV

*Defendant Midwest Dredging Corporation, sued herein under the fictitious name of Doe One, is a Delaware Corporation which has designated T. Jack Foster as its agent for the service of process within the State of California, and which was formerly qualified to do business within the State of California.

V

*Defendant Midwest Dredging Corporation, sued herein under the fictitious name of Doe One, and Likins-Foster Honolulu Corporation, sued herein as Doe Two, and Doe Three through Doe Ten, have received monies and benefits from Estero Municipal Im-

provement District as a result of the domination and control of said district by said T. Jack Foster & Sons, which should justly be restored to said Estero Municipal Improvement District.

VI

*As a result of said domination and control, including control over disbursements of said Estero Municipal Improvement District by the individual and corporation Foster defendants, said defendants are subject to all the duties and obligations of fiduciaries toward said Estero Municipal Improvement District.

VII

*It has been necessary for plaintiff Walter S. Cooper to retain and employ attorneys to bring this action on his behalf and on the behalf of all others similarly situated, in order to secure reimbursement to the District of monies unlawfully expended and to protect the funds of said District from further unlawful expenditure.

VIII

**At all times herein mentioned defendant Midwest Dredging Corporation was a Delaware corporation owned and controlled by T. Jack Foster & Sons. Said corporation was organized on July 31, 1961, and was thereafter admitted to do business in California until September 1, 1964, when its right to do business in California was forfeited for failure to pay state taxes.

IX

**At all times herein mentioned W. A. Innes was a director of the Estero Municipal Improvement District and was also an agent and employee of T. Jack Foster & Sons, acting in the course and scope of said agency and employment. Plaintiff has been informed by a former officer of the Associated Dredging Company of Sausalito, and believes, and upon said information and belief alleges, that said W. A. Innes caused the Associated Dredging Company to submit statements and bills to the Estero Municipal Improvement District during the period from November 10, 1961, through November 23, 1962, and that during the same time said W. A. Innes caused the Estero Municipal Improvement District to issue twenty-two checks totaling $860,218.05 to the name of Associated Dredging Company with the intention and plan that said checks would not be for the benefit of Associated Dredging Company, but would be endorsed payable to Midwest Dredging Corporation.

**Said checks were in fact issued at said time for said amount and were in fact endorsed payable to Midwest Dredging Corporation and deposited into the account of said Midwest Dredging Corporation. Said deposits were in addition to $1,667,183.80 obtained by said Midwest Dredging Corporation as a result of claims made by it against said District.

**Said W. A. Innes, as agent and employee of said T. Jack Foster & Sons, intentional and falsely represented to said Estero Municipal Improvement District, and indirectly to plaintiffs, by causing the filing

of said purported bills and statements by said Associated Dredging Company, that said Associated Dredging Company was seeking payments of money from said Estero Municipal Improvement District.

**Said representations were false and said bills and statements were caused by W. A. Innes to be presented by said Associated Dredging Company to said Estero Municipal Improvement District so that said T. Jack Foster & Sons could obtain monies from Estero Municipal Improvement District without making lawful claim therefor. Said W. A. Innes knew that said representations were false.

**Said representations were made with the intention to deceive the Estero Municipal Improvement District, the public, and plaintiffs as to the true recipient of the monies, and to enable T. Jack Foster & Sons to obtain $860,218.05 without filing any claim or statement therefore.

**Said Estero Municipal Impovement District, acting for the plaintiff taxpayers, relied upon said statements and bills as being genuine statements and bills of said Associated Dredging Company and made payment thereon to their damage in the sum of $860,218.05.

**Plaintiffs did not discover said misrepresentations until Friday, December 16, 1966, when their attorneys, James W. Funsten and David B. Caldwell, found the endorsements upon the back of the cancelled checks of the District. The meaning of said endorsements was not ascertained until former officials

of Associated Dredging Company had been contacted. Said T. Jack Foster & Sons, through said W. A. Innes, have used their control of said District to conceal the said transaction in the records of the District.

Wherefore, plaintiffs pray judgment that the sum of $30,000,000.00, or such sum as appears to have been spent for the advantage of the Foster defendants without lawful authority be restored by the defendants T. Jack Foster & Sons and the individual Foster defendants, and the Foster corporation defendants, and said G. C. Shannon, W. A. Innes and C. W. Olmo to said Estero Municipal Improvement District, and for liens to secure payment thereof.

Plaintiffs pray judgment for costs against the Foster defendants and for an award from the funds recovered for the Estero Municipal Improvement District of such sum as the Court deems reasonable as fees for the attorneys for the plaintiffs and for an award of a reasonable sum to said attorneys if their services result in the preservation of any funds for the said District which otherwise would have been unlawfully disbursed.

FOURTH CAUSE OF ACTION

Plaintiffs complain of defendants and for their fourth cause of action allege:

I

Plaintiffs reallege and incorporate herein by reference each and every allegation of their First and Third Causes of Action hereinabove set forth.

II

Defendants G. C. Shannon, W. A. Innes and C. W. Olmo threaten to continue to expend monies of said purported district to improve and benefit the lands of said defendants T. Jack Foster & Sons, the individual Foster defendants and the corporate Foster defendants, and to extend special privileges and benefits to said defendants, all without lawful authority, and will do so unless they are restrained.

III

Defendants G. C. Shannon, W. A. Innes and C. W. Olmo threaten to continue to levy the taxes of said purported district without apportioning the burden thereof in accordance with the benefit conferred on the land assessed by the expenditures of the district, unless they are restrained from doing so.

IV

Defendants G. C. Shannon, W. A. Innes and C. W. Olmo threaten to continue to give the management, custody, and control of the books and book-keeping (sic) of the ESTERO MUNICIPAL IMPROVEMENT DISTRICT to said T. JACK FOSTER & SONS without authority in law, unless restrained from doing so.

V

Unless said defendants are restrained from said conduct plaintiffs will suffer irreparable injury, and said plaintiffs have no remedy at law.

Wherefore, plaintiffs pray judgment restraining and enjoining defendants G. C. Shannon, W. A. Innes and C. W. Olmo from expending monies of said purported Estero Municipal Improvement District without lawful authority for the benefit of the FOSTER defendants and their lands, from attempting to tax the plaintiffs in an unfair and unlawful manner, and from permitting the defendants Foster to dominate and control the activities of the said district and its bookkeeping, and from otherwise conducting the affairs of the purported Estero Municipal Improvement District for the private and special benefit of the defendants Foster.

Dated: December 1, 1966.

/s/ Walter S. Cooper
As a plaintiff and on behalf
of all other plaintiffs
/s/ James W. Funsten
Attorney for plaintiffs
/s/ David B. Caldwell
Attorney for plaintiffs

APPENDIX ITEM No. 2

THE COURTS' "FINDINGS, ORDERS AND DETERMINATIONS" OF VALIDATION JUDGMENT RENDERED IN SUPERIOR COURT ACTION No. 93050, SAN MATEO COUNTY

A judgment was entered in the aforesaid validation action on December 20, 1961. Said judgment first recites that the Court heard proofs of the allegations of the petition, examined on oath witnesses for petition, and received documentary evidence. The judg-

ment then sets forth the Court's findings, orders and determinations in 31 numbered paragraphs, as follows:

"1. This proceeding was brought pursuant to Section 121 of the Estero Municipal Improvement District Act of the State of California to determine the validity of the creation of the Estero Municipal Improvement District; the right of its officers to hold and perform the duties of their offices; and the proceedings for the authorization of $22,000,000 Reclamation Bonds of the District by the election held December 20, 1960.

2. Summons herein was duly published as required by law and the order of this Court at least once a week for three (3) weeks, to-wit: February 8, 1961; February 15, 1961; and February 22, 1961, in the San Mateo Times, a newspaper of general circulation published in the County of San Mateo, the county where this action is pending, and which was designated by this above-entitled Court as the newspaper in which said summons was to be published.

3. Ten (10) days have elapsed since the completion of the publication of the summons herein and no one has appeared to contest the validity of said proceedings.

4. All allegations set forth in the petition for validation herein are true.

5. An action in rem brought pursuant to Section 121 of the Estero Municipal Improvement District Act is a proper remedy to determine the validity of the creation of the District, the right of its officers

to hold and perform the duties of their offices and the validity of and right to issue bonds which have been duly authorized.

6. The Act does not violate Article IV, Section 25, Sub-division 19 of the State Constitution which prohibits the passage of local or special laws granting to any corporation, association or individual any special or exclusive right, privilege or immunity.

7. No corporation, association or individual has been granted any special or exclusive right, privilege or immunity by the enactment of the Act nor does the Act empower the granting of such right, privilege or immunity.

8. The improvements contemplated by the Act are public improvements of the type which tend to enlarge the resources, increase the industrial energies, and promote the productive power of a considerable number of the inhabitants of a section of the state and lead to the growth of towns and the creation of new sources for the employment of private capital and labor and thus indirectly contribute to the general welfare and to the prosperity of the whole community.

9. Any benefit to the landowner from the enactment of the Act is merely incidental to the public benefit gained from the exercise by the state of its plenary powers relative to water, drainage, health and the general welfare.

10. The fact of ownership of all of the lands within the boundaries of the District by a single landowner

whether corporate or individual, does not change the nature of the benefits to be received by the availability of the Act from public to private.

11. The Act does not violate Article IV, Section 25, Sub-division 33 of the State Constitution since at the time of the adoption of the Act, there was no general law in existence providing for the formation of municipal improvement districts nor granting any public district without electors the combination of powers granted to the District.

12. The area encompassed by the Act represents a unique legislative problem and the accomplishment of the legislative purpose was impossible under existing general laws.

13. The Act does not violate Article IV, Section 31 of the State Constitution by lending or authorizing the lending of public credit to an individual, association, municipality, or other corporation.

14. A separate and distinct public purpose is achieved by the Act, which is one within the constitutional powers of the legislature to bring about; any use of the credit of the District to effectuate its purpose is incidental and is not a violation of the prohibition against the lending of public credit.

15. The exercise by the District and its Board of Directors of the powers granted by the legislature, relative to the authorization, issuance and sale of bonds are for the public benefit and not for the promotion of the interests of the owner or owners of land within the District.

16. The ownership of land is an independent act not motivated by the power to designate legal representatives to serve as directors nor does the electoral control granted by the Act augment the rights of a landowner but rather tends to inhibit the previously existing right to improve or utilize land as he might see fit.

17. The Estero Municipal Improvement District Act does not violate Article I, Section 24 of the State Constitution prohibiting the establishment of property qualifications for the right to vote.

18. The formation of special function districts is a purely legislative function and the Legislature may give those persons it thinks best the opportunity to be heard; such hearing may properly be given to the owners of land as those most interested in the activities of the District.

19. All acts and proceedings had for the creation and organization of the District are legal and valid and the District is duly and legally created and organized and now exists and has since its creation existed under the Estero Municipal Improvement District Act, and the Act is a valid law.

20. The District is validly operating under the laws of the State of California.

21. The members of the Board of Directors of the District were validly appointed by the Board of Supervisors of the County of San Mateo pursuant to Sections 27 and 63 of the Act and have duly qualified.

22. The election directed to be held pursuant to Section 27 of the Act is a general election, within the meaning of Section 61, for the purpose of appointment of Directors in the absence of nominations.

23. The designation by the corporate owner of legal representatives to hold office as Directors subsequent to those persons' appointment but prior to their taking of office was sufficient for all purposes to qualify the appointees as required by Sections 61 and 63 of the Act.

24. The officers of the District and each of them are de jure officers, possessed of the right to hold and perform the duties of their offices, and to hold their offices until the election or appointment and qualification of their successors, and all actions taken and proceedings conducted by said officers since their appointment and qualification are valid, legal and binding.

25. All proceedings for the authorization and leading up to the issuance of the $22,000,000 Reclamation Bonds of the District have been taken in strict compliance with the Act and said bonds have been validly authorized by the election held December 20, 1960, within the District.

26. All acts, conditions and things required by law to exist, happen and be performed precedent to the issuance of the bonds authorized at said election, have existed, have happened and have been performed in due time, form and manner as required by law, and the petitioner is now authorized, pursuant to each and every requirement of law, to issue said bonds.

27. Petitioner may lawfully sell all of said bonds, and said bonds, when sold and delivered, and the interest coupons thereto attached will be valid, binding, legal obligations of the petitioner, in accordance with their tenor and the proceedings pursuant to which they are issued.

28. The monies to be received from the sale of said bonds may lawfully be used for the acquisitions and improvements to be undertaken and of the expenses incidental thereto, as set forth in the propositions submitted to the voters of the District.

29. Said bonds and all of said proceedings are free from any error, irregularity or omission which affects or would affect any substantial right of any person.

30. It is not necessary that this Court appoint an attorney under the provisions of the Soldiers and Sailors Relief Act to represent any defendant or defendants who might be in the military service of the United States.

31. That judgment for the petitioner be, and the same is hereby, ordered entered in accordance with and pursuant to this judgment."

APPENDIX ITEM No. 3

ALLEGATIONS OF SECOND AMENDED PETITION IN COOPER v. ESTERO MUNICIPAL IMPROVEMENT DISTRICT, ET AL., 70 AC 687

"SECOND AMENDED PETITION

First Cause of Action

Petitioner Walter S. Cooper, for himself and all other Taxpayers of the Estero Municipal Improvement District, as his First Cause of Action, alleges:

I

Petitioner Walter S. Cooper is one of a group of persons all of whom are residents of the Estero Municipal Improvement District and Taxpayers therein, and all of whom have a common and identical interest in the subject matter of this petition. The total number of said persons exceeds one thousand and it is impractical to bring all of said persons before the Court as individual petitioners, and therefore the named petitioner, Walter S. Cooper, brings this action as a representative action for and on behalf of himself and all other persons similarly situated.

II

The Estero Municipal Improvement District Act, under which the Estero Municipal Improvement District is claimed to have been created and to now exist, provides that the District shall be governed by three Directors, one of whom is appointed by the Board of Supervisors of the County of San Mateo and the other two of whom shall be elected by the owners of real property within the District, each owner to have one vote for each dollar of assessed valuation.

At all times since the creation of the District, and at the present time, more than two thirds of the real property within the District, by assessed valuation, has been owned either directly or indirectly, by T. Jack Foster & Sons. At all times since the creation of the District, and at the present time, respondent W. A. Innes has been the comptroller of the T. Jack Foster & Sons organization and has received his entire salary from said T. Jack Foster & Sons and has been one of the three Directors of the District. At all times since the creation of the District, and at the present time, respondent G. C. Shannon has been a former employee of the T. Jack Foster & Sons organization and a representative of the T. Jack Foster & Sons organization as one of the three Directors of the District. For more than four years past and at the present time respondent C. W. Olmo has been a Director of the District and a business associate of T. Jack Foster & Sons. Said C. W. Olmo has received substantial benefits from the T. Jack Foster & sons organization as a real estate broker and also as the cement contractor on the building which is owned by T. Jack Foster & Sons and subleased to the Estero Municipal Improvement District at a rental of $2800.00 per month for its offices.

During most of the time the Estero Municipal Improvement District has existed T. Jack Foster & Sons, for a compensation, has performed the bookkeeping and financial functions of the District, and have controlled and disbursed its monies.

At all times since the creation of the Estero Municipal Improvement District and at the present time

the Estero Municipal Improvement District and all of its financial transactions have been completely controlled and directed by T. Jack Foster & Sons. Said T. Jack Foster & Sons have admitted in open Court that they have controlled the financial transactions of said District at all said times.

III

On or about July 31, 1961, T. Jack Foster & Sons caused the incorporation of the intervenor Midwest Dredging Corporation in the State of Deleware, (sic) with a capitalization of $10,000, and entirely owned by T. Jack Foster & Sons. On August 16, 1961, said Midwest Dredging Corporation was qualified to do business within the State of California. On the next day, August 17, 1961, after what is described in the Estero Municipal Improvement District Official Bond Statement as 'considerable negotiations', Midwest Dredging Corporation was awarded a contract with Estero Municipal Improvement District. Between November 20, 1961, and May 14, 1963 the Estero Municipal Improvement District paid to said Midwest Dredging Company $1,667,183.00 on claims made by Midwest Dredging Corporation. All dredging equipment was supplied without cost by said Estero Municipal Improvement District and actual work was performed by Associated Dredging Company of Sausalito. During the same period of time Estero Municipal Improvement District issued checks totaling more than $968,821.81 to Associated and all but $58,603.76 of this sum was deposited to the account of Midwest Dredging Corporation after endorsement by Associ-

ated Dredging Company of Sausalito. Thereafter more than $400,000 of these funds were disbursed to Likens Foster Honolulu Corporation, a corporation owned by T. Jack Foster & Sons.

During the first three months of 1961, alone, the District disbursed over $330,000 of its public monies to T. Jack Foster & Sons upon the claim that said sums were reimbursement of expenditures for the benefit of the district. The vouchers or bills upon which the payments were made do not include evidence from which it can be determined that the expense was for the benefit of the District and expenses of such questionable nature as Diner's Club bills of T. Jack Foster & Sons employees and a hotel bill of personel (sic) registered at the hotel as an employee of T. Jack Foster & Sons were claimed against the District by T. Jack Foster & Sons. Large amounts of the claims paid to T. Jack Foster & Sons have been for reimbursement of expenses occurring before the existence of the District.

IV

Since the creation of the District millions of dollars of public monies of the District have been spent in placing earth fill on the dry land of the District and grading that fill to within four inches of a mean level and compacting that fill to 90% compaction to bring the land to Federal Housing Administration building standards. Said work has been done at public expense upon the lands of T. Jack Foster & Sons, so that T. Jack Foster & Sons have been able to sell

said land to contractors for construction without spending any of their own funds upon filling, grading or compacting.

V

T. Jack Foster & Sons have caused the Estero District to purchase from T. Jack Foster & Sons land, some of which was remnants of subdivision sales and had no substantial value. Said T. Jack Foster & Sons have caused the said Estero District to pay to T. Jack Foster & Sons prices for said remnants equal to the prices paid for useful subdivision land, and without making any allowance for the cost to the District of filling, compacting and grading said land.

T. Jack Foster & Sons have received $900,000 from the State of California for sale to the State of land which was filled, compacted and graded at the public expense of the District and has not reimbursed the District for any said expense although the land is now off the tax rolls and no longer available as a source of income of taxes to repay the debt incurred by the public for its improvement.

VI

T. Jack Foster & Sons have acquired benefits, in addition to those set forth above, at the expense of the Estero Municipal Improvement District in that, among other things, the District has paid the attorneys for T. Jack Foster & Sons $4,000 for services rendered to and for the benefit of T. Jack Foster & Sons, have been regularly subletting office space in a

building owned by T. Jack Foster & Sons for $2,800 when necessary and proper space may be obtained for less than half of that sum, and have been disbursing many thousands of dollars directly to T. Jack Foster & Sons.

VII

At all times that T. Jack Foster & Sons have been obtaining the financial benefits above referred to from the Estero Municipal Improvement District, T. Jack Foster & Sons have controlled the financial affairs of said District and have therefore been a trustee for the District, but T. Jack Foster & Sons have refused the demands of petitioner for an accounting of the benefits received by T. Jack Foster & Sons from the Estero Municipal Improvement District.

Wherefore petitioner prays for an Order, Judgment and Decree of this Court that:

1. T. Jack Foster & Sons make an accounting of benefits received by T. Jack Foster & Sons, and its wholly owned subsidiaries, from the Estero Municipal Improvement District showing all amounts received by said T. Jack Foster & Sons and its subsidiaries, grounds or reasons for each disbursement from the Estero District to T. Jack Foster & Sons.

2. Should T. Jack Foster & Sons not be directed to make such an accounting or fail and refuse to do so, said Estero Municipal Improvement District cause an investigation to be made of the disbursements to T. Jack Foster & Sons, and report to this Court thereon.

Second Cause of Action

Petitioner Walter S. Cooper, for himself and all other Taxpayers of the Estero Municipal Improvement District, as his Second Cause of Action, alleges:

I

Petitioner refers to paragraphs I and II of his First Cause of Action herein and by reference makes them a part hereof.

II

From January 1, 1967 to June 15, 1967, while no dredging was being done, the Estero Municipal Improvement District paid Hydraulic Dredging Company $438,286.61, including weekly payrolls of Hydraulic Dredging Company exceeding $1,000 each week. When Hydraulic Dredging Company was under subpena in this action to testify regarding its transactions with Estero Municipal Improvement District it refused to reveal the contents of its ledger showing the Estero Municipal Improvement District financial transactions. Its dealings with Estero Municipal Improvement District were not the result of a contract by public bidding, but were the results of negotiations conducted while the district was under private control. Said transactions have not been audited by any person acting for the benefit of the taxpayers.

Wherefore, petitioner prays for an Order, Judgment and Decree upon its Second Cause of Action providing that:

1. Said Estero Municipal Improvement District obtain an accounting to show how Hydraulic Dredg-

ing Company has disbursed the funds which have been paid to it by Estero Municipal Improvement District and what value was given for those funds.

Third Cause of Action

Petitioner Walter S. Cooper, for himself and all other Taxpayers of the Estero Municipal Improvement District, as his Third Cause of Action, alleges:

I

By the provisions of the Estero Municipal Improvement District, Act and section 193 thereof, where the Estero District has appointed a Depositary, which they have, there must be a fiduciary or honesty bond upon the finance officer or officers, for the sum of $250,000.00. Until December 31, 1966, such bonds were provided by the St. Paul Insurance Companies, but they did not renew. The Estero Municipal Improvement District stated on June 27, 1967, that the Estero Municipal Improvement District did not then have such a bond on its premises and it refused to inform Petitioner the nature and terms of any existing honesty bond held by the District. Petitioner is informed and believes that the Estero Municipal Improvement District no longer carries a fiduciary bond in compliance with Section 193 of the Estero Municipal Improvement District Act.

Wherefore, Petitioner prays judgment, decree or order that the Estero Municipal Improvement District either make proof that it has a fiduciary bond in compliance with Section 193 of the Estero Act or

place its funds into the hands of some other Government body which has such fiduciary bonds.

Fourth Cause of Action

Petitioner Walter S. Cooper, for himself and all other Taxpayers of the Estero Municipal Improvement District, as his Fourth Case of Action, alleges:

I

As shown by the July 6, 1967, Official Bond Statement of the Estero Municipal Improvement District, at page 13, the said Directors of the Estero Municipal Improvement District have taken $135,000 of the public Park monies and placed them in the "Reclamation" fund. Since said transaction additional interest payments have been made and additional disbursements have been made to Hydraulic Dredging Company from said "Reclamation Fund", though no dredging has been done. Further additional interest payments will become due upon reclamation bonds within the next six months which will exceed the amount of the "Reclamation Funds" which are on hand. Unless it is restrained from so doing, it is likely that the Estero District Directors will remove additional funds from other Bond Funds for transfer to the "Reclamation Fund", all in violation of law, unless restrained from so doing.

Wherefore, petitioner prays judgment, order and decree that the Estero Municipal Improvement District Directors replace the $135,000 taken from the Park Fund and cease and desist transferring or dis-

bursing any monies from any fund except for the purposes lawfully authorized by the election or purported election authorizing the sale of bonds to create the fund.

Fifth Cause of Action

Petitioner Walter S. Cooper, for himself and all other Taxpayers of the Estero Municipal Improvement District, for his Fifth Cause of Action, alleges:

I

According page 13 of the Estero District Official Bond Statement of July 6, 1967, as of April 30, 1967, $4,596,952.27 of the sale proceeds of Estero District bonds had been spent for payment of interest on Estero District bonds. The same statement shows that the Estero District plans to pay $2,012,000 for "interest and other expenses" from proceeds of water and sewer bonds being sold and $6,323,000 from the proceeds of other bonds for interest in the years after 1967. According to the resolution of the Board of Directors of the Estero District, $2,400,000, or more than 25% of the current bond issues, will be used to pay interest on these and prior bonds within the next twelve months. The election, or purported election authorizing the issuance of said bonds did not authorize their use for payment of interest on prior outstanding bonds.

Wherefore petitioner prays a judgment, order, or decree directing that none of the proceeds of bond sales be used for payment of interest on prior existing bonds.

Sixth Cause of Action

Petitioner Walter S. Cooper for himself and for all other Taxpayers of the Estero Municipal Improvement District, as his Sixth Cause of Action, alleges:

I

Petitioner refers to each and every paragraph of his First Cause of Action and incorporates the same herein by reference.

II

By reason of the control of T. Jack Foster & Sons over the Estero Municipal Improvement District financial affairs, said T. Jack Foster & Sons is in the law a trustee for Estero Municipal Improvement District.

III

The Estero Municipal Improvement District is using public funds to improve the lands of T. Jack Foster & Sons with the understanding that T. Jack Foster & Sons will complete a development of those lands.

IV

It is therefore a reasonable subject of public inquiry to determine whether T. Jack Foster & Sons are financially able to fulfill their obligations as such trustee and as such developer.

V

T. Jack Foster & Sons has failed to provide detailed financial information to Dun & Bradstreet and

to other persons, although requested to do so, and presently the United States Government claims that T. Jack Foster & Sons is indebted to it for unpaid Federal Income Taxes in more than $1,000,000 and this claim has been upheld by the United States Tax Court. T. Jack Foster & Sons continues to owe Leslie Salt Company $3,736,689.00 for the purchase of part of the lands which have become the Estero District. Petitioner is informed and believes that additional millions are owed to Schilling Estate Company by T. Jack Foster & Sons for the purchase of these lands.

VI

It is improper for the Directors of the Estero Municipal Improvement District to spend further public monies upon the lands of T. Jack Foster & Sons, as they intend to do, if said T. Jack Foster & Sons is unable to complete the development of those funds, when the District is in the control of T. Jack Foster & Sons.

VII

The Estero District has already spent more money for the development of T. Jack Foster & Sons land than was originally planned, and it is doubtful that there will be sufficient value after improvement to yield taxes for repayment of interest and bonds unless capital is invested by T. Jack Foster & Sons.

Wherefore, petitioner prays Judgment, Order and Decree that Estero Municipal Improvement District obtain a detailed current financial statement from T. Jack Foster & Sons and a detailed statement of the

plans of T. Jack Foster & Sons showing the capital to be invested by T. Jack Foster & Sons and the ultimate sources of taxes for repayment of the bond debt, before the District expends any further funds for the benefit of T. Jack Foster & Sons or their lands, and furthermore, petitioner prays that Estero District be directed to pay the attorneys fees and costs of petitioner should the Court determine that the funds of the District have been recovered or protected by this action.

FUNSTEN & CALDWELL,
Attorneys for Petitioner
By /s/ James W. Funsten
James W. Funsten"

APPENDIX ITEM No. 4

A COPY OF ACT OF 1967, CHAPTER 1511, AMENDING ESTERO ACT OF 1960, CHAPTER 82

CHAPTER 1511

An act to amend Sections 20, 21, 22, 26, 28, 29, 55, 57, 58, 59, 61, 63, 64, 65, 68, 106, 161, and 162 of, to add Article 10.5 (commencing with Section 167.1) to, and to repeal Sections 27 and 60 of, the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session), and to amend Section 100 of Chapter 29 of the Statutes of 1967, relating to the Estero Municipal Improvement District, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 28, 1967. Filed with Secretary of State August 28, 1697.]

The people of the State of California do enact as follows.

SECTION 1. Section 20 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 20. "Voter," except as otherwise provided herein, means an owner, or the officer appointed therefor by the board of directors of a corporation owner, or the legal representative of the owner.

SEC. 1.5 Section 21 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 21. "Officers of election," other than officers provided for elections conducted pursuant to the Uniform District Election Law, consist of an inspector and two judges. They shall be persons appointed by the board of directors and need not be voters.

SEC. 2. Section 22 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 22. In the application to the district of laws, the procedure of which is made applicable to proceedings of the district, terms used in those laws shall have the following meanings:

(a) "City council," "council" and "legislative body" mean board.

(b) "City," "municipality" and "local agency" mean district.

(c) "Clerk" and "city clerk" mean the secretary of the district.

(d) "Superintendent of streets," "street superintendent" and "city engineer" mean the engineer of the district or other person appointed to perform such duties, to be called district engineer.

(e) "Tax collector" means the tax collector of the district.

(f) "Treasurer" and "city treasurer" mean the county treasurer or district finance officer.

(g) "Auditor" means the county controller or district finance officer.

(h) "Budget Law" means Chapter 1 (commencing at Section 29000) of Division 3 of Title 3 of the Government Code.

(i) "Uniform District Election Law" means Part 3 (commencing with Section 23500) of Division 12 of the Elections Code.

SEC. 3. Section 26 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 26. The board is the governing body of the district and, commencing with the last Friday in December, 1967, shall consist of five (5) members.

one of whom shall be president. The officers of the district are the five members of the board and a secretary. The district may have a finance officer and other officers as the board may from time to time create.

SEC. 4. Section 27 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is repealed.

SEC. 5. Section 28 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 28. Except as otherwise provided in this section, two directors shall be owners or officers or legal representatives of owners, two shall be registered voters resident within the district, and one shall be a public member designated and appointed by the county board of supervisors. The term of the public member commencing in March, 1968, shall expire on the last Friday of December, 1969, and succeeding terms shall thereafter be filled by nomination and election or appointment pursuant to the Uniform District Election Law by registered voters resident within the district.

Landowner-directors shall be nominated and shall be elected or appointed pursuant to Article 4 (commencing with Section 55) of this act at elections to be held on the fourth Tuesday in March of 1968 and 1970. The terms of the directors elected or appointed at such times shall run until the last Friday in De-

cember, 1971. Thereafter, said offices shall be filled by nomination and election or appointment pursuant to the Uniform District Election Law by registered voters resident within the district.

A general district election shall be held on the first Tuesday after the first Monday in November, 1967, pursuant to the Uniform District Election Law for the purpose of filling two offices of director. Such offices shall be filled by and voted upon by registered voters resident within the district and qualified to vote on said date. The two candidates receiving the highest number of votes shall be deemed elected, the one with the highest votes to serve for four years and the one with the next highest number of votes to serve for two years. All subsequent terms of office filled pursuant to the Uniform District Election Law shall be for four years.

Commencing with the election to be held on the first Tuesday after the first Monday in November, 1971, no person shall be qualified to be elected or appointed to the office of director nor to vote at any district election who is not a registered voter resident within the district.

SEC. 6. Section 29 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

SEC. 29. Except as otherwise provided in Section 28, the term of each director, after the first board, shall be four years, or until the election or appointment, and qualification of his successor.

SEC. 7. Section 55 of the Estero Municipal Improvement District Act (Chapter 82 of the statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 55. A general district election, governed by the provisions of the Uniform District Election Law, shall be held on the first Tuesday after the first Monday in November of each odd-numbered year. A district election for the purpose of electing landowner-directors shall be held on the fourth Tuesday in March of 1968 and 1970.

SEC. 8. Section 57 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 57. The hours during which the polls shall be opened at any special district election shall be as established by the board.

SEC. 9. Section 58 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 58. Notices of special elections shall be given as nearly as practicable in accordance with the general laws regarding notices of municipal elections.

SEC. 10. Section 59 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 59. Nominations for the position of landowner-director shall be in writing, shall be signed by

voters representing at least 10 percent of the assessed valuation of land in the district as shown by the last equalized assessment roll, shall be filed with the secretary of the district, not more than 45 nor less than 25 days before the election.

SEC. 11. Section 60 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is repealed.

SEC. 12. Section 61 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 61. If on the 24th day prior to a landowner district election pursuant to this article, only one person has been nominated for each of the positions to be filled at that election, or no person has been nominated for any such office, or offices, an election shall not be held.

SEC. 14. Section 63 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 63. If, pursuant to Section 62, an election is not held, the Board of Supervisors of the County of San Mateo, at a meeting held prior to the day fixed for the election, shall appoint to the positions of directors those persons nominated, or, if no persons are nominated, any qualified persons, who shall qualify and serve as if elected at a general district election.

SEC. 15. Section 64 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes

of 1960, First Extraordinary Session) is amended to read:

Sec. 64. Except as herein otherwise provided, each voter shall have one vote for one dollar ($1) in assessed valuation of land owned by him as shown by the last equalized assessment roll.

SEC. 16. Section 65 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 65. A majority of the votes cast shall be required to approve a proposition.

SEC. 19. Section 68 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 68. Except as provided in this act a special election shall be conducted as nearly as practicable in accordance with the general laws for cities.

SEC. 19.1. Section 106 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 106. By resolution adopted by a four-fifths vote of all of its members, when in its judgment it is advisable, the board may call an election and submit to the voters of the district the question of whether bonds shall be issued.

SEC. 19.2. Section 161 of the Estero Municipal Improvement District Act (Chapter 82 of the Stat-

utes of 1960, First Extraordinary Session) is amended to read:

Sec. 161. Annually, at least fifteen (15) days before the first day of the month in which the board of supervisors is required by law to levy the amount of taxes required by law for county purposes, the board shall furnish to the board of supervisors a written statement of the following:

1. The amount necessary to pay the interest on bonds for that year, and the portion of the principal that is to become due before the time for making the next general tax levy. Said statement shall separately set forth the amounts required for each issue of bonds as defined in Section 122. If a zone or zones have been established pursuant to Article 10.5 (commencing with Section 167.1), the statement shall separately set forth the amounts required within each zone. The statement shall also state for each zone whether the tax base is to be land, land and improvements, or all taxable property.

2. The amount necessary to maintain, operate, extend, or repair any work or improvements of the district, and to defray all other expenses incidental to the exercise of any of the district powers or to pay any existing obligations of the district.

SEC. 19.3. Section 162 of the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session) is amended to read:

Sec. 162. Except as set forth in Article 10.5 (commencing with Section 167.1), the board of super-

visors shall at the time and in the manner of levying other county taxes, levy and cause to be collected a tax upon the taxable real and personal property in the district, based upon the last equalized assessment roll of the county, sufficient to pay the amounts set forth in the statement of the board. The aggregate taxes levied for any one fiscal year, other than those levied to pay the principal and interest on bonds, shall not exceed five dollars ($5) on each one hundred dollars ($100) of the assessed valuation of taxable real and personal property in the district.

SEC. 19.4. Article 10.5 (commencing with Section 167.1) is added to the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session), to read:

Article 10.5. Zones

Sec. 167.1. From and after the effective date of this section, if, in the judgment of the board of directors, varying benefits are or will be derived by the different parcels of land lying within the district from the expenditure of bond proceeds for any one or more of the purposes authorized by Article 5 (commencing with Section 75), the district may be divided into a zone or zones according to such benefits. After the establishment of such a zone or zones, any tax levied to pay the principal of and interest on bonds heretofore or hereafter authorized to be issued by the voters of the district for such purposes may be levied and collected upon the taxable property within each zone in accordance with the percentage of the sum to

be raised each year in such zone by the levy and collection of said tax.

Sec. 167.2. The district may be divided into as many zones, up to the total number of parcels of land in the district, as may be deemed proper for each bond purpose, and each zone may be composed of and include all of the lands within the district which will be benefited in like measure for such purpose. A parcel of land may be included in as many zones as may be necessary in order to reflect the relative benefits derived by it from various bond issues.

Sec. 167.3. Before establishing any zones or changing a parcel of land from one zone to another, the board of directors shall by resolution direct the preparation of a report in writing by a qualified registered civil engineer employed by the district for the purpose. Such report shall be filed with the district secretary and shall contain:

(a) The percentages or other method of apportionment to be used to determine the amounts to be raised from the lands in each zone; and

(b) A map or plat of the district showing the parcels of land within the district existing at the time of the report, as nearly as may be, and designating each zone by a different letter or number and by separate boundaries, coloring or other convenient and graphic method, so that all persons interested may with accuracy ascertain within which zone any parcel of land is located. If deemed advisable, a separate map or plat may be prepared for each bond purpose for which zones are created or several purposes may

be combined. Such map or plat shall also refer to the parcels of land by their respective county assessor's parcel numbers.

Sec. 167.4. When the report is filed, it shall be considered by the board of directors who may modify it in any respect. After passing upon the report, the board by resolution shall appoint a time and place for hearing protests to the proposed zone or zones and the method of allocation and shall direct the district secretary to give notice of the hearing by publication pursuant to Section 6062a of the Government Code in a newspaper of general circulation within the district. The hearing shall be held not less than 14 days after the passage of the resolution. The secretary shall also cause notice of the hearing to be posted conspicuously in at least three public places within the district. Such posting shall be completed at least 10 days before the date set for hearing protests.

Sec. 167.5. At least 10 days before the date set for hearing of protests, the secretary shall mail, postage prepaid, notice of the hearing to all persons owning taxable property proposed to be included within a zone whose names and addresses appear on the last equalized assessment roll for county taxes or who are known to the secretary. The failure of the secretary to mail the notice to any property owner or the failure of any property owner to receive the notice shall not affect the validity of any proceedings taken under this article. If property assessed by the state under Section 14 of Article XIII of the Constitution is proposed to be included within a zone, such notice shall be mailed to every owner of such property at

the address thereof shown on the last board roll transmitted to the county auditor.

Sec. 167.6. Any interested person may object to the proposed zones or to the method of allocation by filing a written protest with the secretary at or before the time set for hearing. Such protest must contain a description of the property in which each signer thereof is interested sufficient to identify the same, and if the signers are not shown on the last equalized assessment roll as the owners of such property, must contain or be accompanied by written evidence that such signers are the owners of such property or are obligated to pay the taxes thereon. The secretary shall endorse on each protest the date of its receipt, and at the time appointed for the hearing shall present to the board of directors all protests filed with him.

Sec. 167.7. At the time fixed for hearing, the board of directors shall consider the protests and either conform, modify or correct the zones and the method of apportionment. It shall thereafter by resolution order the establishment of the zones and declare its action upon the report. The resolution shall be final and conclusive as to all persons, and thereafter any levies required to be made for the payment of principal of and interest on bonds shall be made in accordance therewith and not on the present districtwide annual ad valorem basis.

Sec. 167.8. After the adoption of the resolution ordering the establishment of zones, a certified copy thereof, together with a certified copy of the report as confirmed, modified or corrected, shall be filed with

the county assessor. The secretary shall also make such filings as may be required with the State Board of Equalization pursuant to Chapter 8 (commencing with Section 54900) of Part 1, Division 2, Title 5 of the Government Code. The filing with the county assessor required by this section shall be deemed a filing pursuant to said Chapter 8 and no further filings need be made.

Sec. 167.9. In the event that the board of directors may deem it advisable to divide an existing zone or to change or modify one or more zones, it shall order a report and hold hearings thereon in the same manner as provided for the establishment of zones by this article, but the report and the notice and hearing thereon shall be limited to the area and zones affected by the proposed changes. From and after the approval of such changes as determined by the board of directors, and following the making of the filings required by Section 167.8, all subsequent tax levies shall be in accordance with such changes.

Sec. 167.10. If, in the judgment of the board of directors, at the time it makes a determination as provided in Section 167.1, as to bonds issued for purposes of reclamation; drainage of roads, streets and public places, including, but not limited to curbs, gutters, sidewalks, grading, paving; culverts, bridges, underpasses or viaducts; or street and highway lighting facilities, varying benefits will be more equitably apportioned among the several lots or parcels of land within a zone by the levy of taxes, to pay the principal and interest of said bonds, upon the taxable land

and improvements or taxable land only within the zone, for a particular issue of bonds, it shall preliminarily so determine. In such event, the report prepared pursuant to Section 167.3 shall contain such information as will present the comparative difference between such tax base and the basis of all taxable property. The notices shall contain a statement of the preliminary determination and proposed action and the matter shall be heard and finally determined as provided in Sections 167.1 to 167.9, inclusive.

SEC. 19.6. Section 100 of Chapter 29 of the Statutes of 1967 is amended to read:

Sec. 100. This act, with the exception of Section 99, shall become operative on January 1, 1969. Section 99 shall become operative on the 61st day following the adjournment of the 1967 Regular Session. Sections 59.1 to 72, inclusive, of this act shall not become operative if Assembly Bill No. 984 is enacted by the Legislature at the 1967 Regular Session.

SEC. 19.7. Any litigation putting in issue the validity of, or the exercise of any express or implied powers granted by, the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session), or the validity of the creation of the Estero Municipal Improvement District or of any bonds issued or to be issued pursuant to that act, shall be set for trial at the earliest possible date and shall take precedence in the trial courts and the appellate courts of all other cases, except older matters of the same character, and matters to which special precedence may be given by law.

SEC. 20. Notwithstanding the provisions of the Uniform District Election Law, any director of the Estero Municipal Improvement District serving in the office on the date of the November 1967 general district election shall serve out the term for which he was elected or appointed. Each director elected at the November 1967 general district election shall not qualify for the office to which he was elected until the term of his predecessor has expired, however the term of each director elected at the November 1967 election shall commence from and including the last Friday in December of 1967.

SEC. 21. This act is intended to implement the recommendations of the Assembly Interim Committee on Municipal and County Government as set forth in Volume 6, No. 24, of the committee report to the 1967 Legislature.

SEC. 22. This act is an urgency statute necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

In order to make certain that this act will become effective in time for the November 1967 General Election, and in order to avoid a drastic tax increase which would result from an inability to sell bonds to pay capitalized interest, issued pursuant to the Estero Municipal Improvement District Act (Chapter 82 of the Statutes of 1960, First Extraordinary Session), because of pending litigation, it is necessary that this act take effect immediately.